



Client Update | Antitrust and Competition Department

Does Israeli Court Limit Israeli Class Actions against International Cartels?

Background

In recent years, there have been a number of class actions in Israel in which the plaintiffs have attempted to seek damages in Israel arising from alleged overcharging by international cartels. The "trigger events" for most of these proceedings were decisions by various courts and regulators outside Israel regarding international cartels, e.g. the European Commission and European courts, US courts (in either criminal proceedings or class actions) and the like. Some of the class actions are filed in cooperation with law firms overseas dealing with the same cartels outside of Israel.

Moreover, some of the class actions' defendants were not even active in Israel and some of the allegedly cartelized products were never sold directly in Israel and were used only as components in end-products sold to importers and end-consumers in Israel. These products were sold not by the defendants, but rather by their customers, the alleged direct victims of the cartels actions.

A few examples of such class actions include a follow-on class action to the air cargo antitrust litigation; a follow-on class action to the LCD-panel antitrust litigation; the CRT antitrust litigation; the Lithium batteries antitrust litigation and the alleged prohibited information exchanges between truck manufacturers. All of these examples relied on antitrust regulatory decisions and/or litigation outside of Israel.

Israeli District Court Verdict: No Service Outside the Jurisdiction Where There Is No Sufficient Nexus to Israel

The recent Central District Court's decision was rendered in connection with the Israeli follow-on class action to the LCD-panel antitrust litigation. The Court cancelled a decision to permit service outside of the jurisdiction which was rendered by the Court Registrar in March 2016. The decision concerned several non-Israeli defendants allegedly involved in the "LCD-panels cartel". Both the defendants and the plaintiffs agreed that the cartel itself existed outside of Israel; that the relevant products – LCD-panels – were also



sold outside Israel and were not targeted specifically to Israel; and that none of the defendants sold the final products into which the LCD-panels were incorporated in Israel or to Israel.

The Court Registrar was of the opinion that these facts do not prevent service outside of the jurisdiction, *inter alia*, since the cartelized ingredients had a substantive influence on the end-product price in Israel. On appeal, the District Court thought otherwise.

The District Court's Decision states the following:

- To establish jurisdiction over non-Israeli defendants who have no presence in Israel, the Court must grant its permission for service to be made outside of the jurisdiction under rule 500(7) of Israel's Civil Procedure Regulations 1984. Under this rule, the plaintiff must prove that the "action is based on an act or omission in the state of Israel". The act or omission concerned, must be an act or omission of the defendants or someone on their behalf in order to establish jurisdiction against them.
- In the current case, the plaintiff should have proved the existence of an "act or omission" occurring in Israel with regard to the activity of the international cartel. The plaintiff was aware of this, and therefore tried to attribute an act in Israel to the defendants in the following two actions:
 - (i) The selling of the end-products in Israel by third parties; and
 - (ii) Classifying the price raise in Israel as part of the "act".
- The Court rejected both of these arguments. With regard to the selling of end products in Israel, it was decided that these were performed by third parties and cannot be attributed to the defendants. With regard to the alleged influence on the prices in the Israeli market, as argued by the plaintiff, the Court concluded that this is only the resulting damage of the alleged global cartel, and the damage is, under long-established Israeli case-law, not part of the "act" required by Rule 500(7) (and therefore not sufficient in itself to establish jurisdiction).

The Plaintiff has filed an appeal regarding the Court's decision before the Israeli Supreme Court. If the Supreme Court decides to allow the appeal and enter a decision based on its merits, this apparently



HERZOG FOX & NEEMAN
LAW OFFICE



technical decision will create an important precedent which may decide the fate of many antitrust follow-on class actions in Israel.

It should be noted that the decision does not seem to be in line with another decision of the same court of January 2015 (the "*LG Decision*"), which referred to the international CRT antitrust litigation. In that case, the judge did allow service to be made overseas of a similar class action in Israel. However, the reasoning for the LG Decision is very short and lacks any substantive discussion of the claims which were not accepted by the current decision. Motions have been filed requesting the Court to overturn the approval of service outside the Israeli jurisdiction, which was previously granted in the LG Decision. These motions are currently pending. In any event, the existence of different and apparently contradictory decisions may constitute a valid reason for the Supreme Court to permit the hearing of an appeal before it.

It should be noted, however, that even a Supreme Court ruling upholding the decision will not necessarily put an end to indirect purchasers' class actions against non-Israeli defendants. As mentioned in the Court Decision, the Israel Ministry of Justice is currently considering an amendment to Rule 500(7), which will allow service outside of Israel based solely on damage occurring within Israel. Should such an amendment be enacted, it will remain to be seen how the courts will treat the indirect harm suffered by indirect purchasers.

It should be emphasized that such lawsuits can still be filed against defendants, who have a direct or indirect local presence, which enables service to be made within the State of Israel, subject to the conditions set out in rule 482 of Israeli Civil Procedure Regulations, 1984, for example, via distributors or subsidiaries.

For any questions or clarifications, we remain at your disposal.

The Antitrust & Competition Department | Herzog Fox & Neeman

[Talya Solomon | Partner](#)

Head of Antitrust & Competition Department
03-692-5960
solomonta@hfn.co.il

[Iris Achmon](#)

Antitrust & Competition Department
03-692-5960
achmoni@hfn.co.il